

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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ALLIANCE FOR OPEN SOCIETY
INTERNATIONAL, INC. *et al.*,

Plaintiffs,

05 Civ. 8209 (VM) (DF)

v.

UNITED STATES AGENCY FOR
INTERNATIONAL DEVELOPMENT *et al.*,

Defendants.

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**NOTICE OF MOTION OF PLAINTIFF PATHFINDER INTERNATIONAL
FOR PRELIMINARY INJUNCTION**

To: Richard E. Rosberger, Esq.
Assistant United States Attorney
Office of the United States Attorney – Southern District of New York
86 Chambers Street
New York, NY 10007
Attorneys for Defendants United States Agency for International Development
and Andrew Natsios, Administrator, USAID

Paula Stannard, Acting General Counsel
U.S. Department of Health and Human Services
200 Independence Ave., S.W., Room 713-F
Washington, DC 20201

Paula L. Kocher, Deputy Associate General Counsel
U.S. Centers for Disease Control and Prevention
1600 Clifton Rd, NE
M/S D53
Atlanta, GA 30333

PLEASE TAKE NOTICE that plaintiff Pathfinder International (“Pathfinder”), pursuant to Federal Rule of Civil Procedure 65, upon the accompanying declaration of Daniel E. Pellegrrom, and for the reasons set forth in the accompanying memoranda of law, and upon: 1) all the prior pleadings and proceedings herein, including the Notice of Motion for Preliminary Injunction filed by Plaintiffs Alliance for Open Society

International and Open Society Institute on September 28, 2005, and the accompanying declarations of Burt Neuborne, Rosanna Barbero, Chris Beyer, Pedro Chequer, Rebekah Diller, Robert Kushen, Ruth Messinger, Maurice Middleberg, and Aryeh Neier, and the exhibits thereto, and 2) the accompanying Memorandum of Law in Support of Motion of Plaintiffs Alliance for Open Society International and Open Society Institute for a Preliminary Injunction, will move before the Hon. Victor Marrero at a date and time to be set by the Court and the parties, at the Courthouse of the United States District Court for the Southern District of New York, 40 Centre St., New York, New York, 10007, for a preliminary injunction that does each of the following:

- (1) bars defendants United States Agency for International Development (“USAID”); Andrew Natsios, Administrator of USAID; the United States Department of Health and Human Services (“DHHS”); Michael O. Leavitt, Secretary of DHHS; the United States Centers for Disease Control and Prevention (“CDC”); and Julie Louise Gerberding, Director of CDC (collectively, “defendants”), from discontinuing and/or delaying the funding of plaintiff Pathfinder pending a final ruling on the merits;
- (2) bars defendants from unilaterally terminating any cooperative agreement, contract or grant with Pathfinder; causing the termination of any subagreement to which Pathfinder is a party; seeking a refund of moneys disbursed under any cooperative agreement, contract, grant or subagreement; debarring Pathfinder; or otherwise taking action against Pathfinder, on the grounds that Pathfinder has used its private funding to engage in any privately funded actions protected by the First Amendment, including but not limited to:

- a) Organizing sex workers and working cooperatively with partner organizations composed of individuals involved in sex work in India, Ethiopia, and elsewhere;
- b) Conducting outreach to brothel owners and pimps in an attempt to foster safer sex practices and assist sex workers;
- c) Engaging in advocacy, within the U.S. and abroad, to improve HIV/AIDS service delivery in developing countries, including advocacy concerning how legal regimes criminalizing and regulating sex work may affect those efforts;
- d) Working with community organizations in Brazil that, as part of their efforts to limit exploitation of sex workers, have sought or may seek to change laws and regulations surrounding commercial sex work so that they do not serve as a pretext for brothel owners, corrupt police and others to abuse sex workers.

(3) granting such other and further relief as the Court shall deem proper.

Pathfinder also joins plaintiffs Alliance for Open Society International and Open Society Institute in seeking entry of a declaratory judgment that the pledge requirement contained in 22 U.S.C. § 7631(f) requires only that U.S.-based non-profits receiving Global AIDS Act funding state that sex work causes harm to the women involved, does not in any way restrict the activities in which those non-profits may engage with their non-government funding, and does not impede the activities of Pathfinder in any way. In the alternative, Pathfinder seeks entry of a declaratory judgment that defendants' application of the pledge requirement to the plaintiffs and other non-profit organizations based in the United States is unconstitutional.

Unless defendants are restrained and enjoined by order of this Court, Plaintiff Pathfinder will suffer immediate and irreparable injury, loss and damages in that its constitutional rights are being violated. Plaintiff Pathfinder has no adequate remedy at law. The immediate and irreparable injuries faced by Plaintiff Pathfinder are more fully

described and set forth in the Amended Complaint, and in the memoranda of law and accompanying declaration submitted in support of this motion.

Dated: New York, New York
December 7, 2005

/s/Rebekah Diller

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